IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 769 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AGRICULTURAL PRODUCE MARKET COMMITTEE

Versus

GUJARAT SHEEP AND WOOL DEVELOPMENT CORPORATION

Appearance:

1. Civil Revision Application No. 769 of 2001

MR SANDEEP N BHATT for Petitioner No. 1

MR DP KINARIWALA for Respondent No. 1-2

RULE SERVED for Respondent No. 1

RULE NOT RECD BACK for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/11/2002

ORAL JUDGEMENT

#. The petitioner is the original defendant of Special Civil Suit No.12 of 2001, which is filed for getting

possession of the suit premises on various grounds. The petitioner defendant is the lessee and has been given the piece of land as per the agreement entered into between the petitioner and respondents. The plaintiffs, thereafter, after terminating the tenancy, have filed the aforesaid suit for possession and mesne profit. The said suit is filed in the court of the Civil Judge (Senior Division), Rajkot. In the aforesaid suit, an application was preferred on behalf of the petitioner at Exh.13 on the ground that the Court has no territorial jurisdiction to decide the suit and that there is relationship of landlord and tenant between the parties, which is governed by the Rent Act, and, therefore, the suit may be dismissed for want of jurisdiction. The trial Court has rejected the said application, as, it has been found that, prima facie, the Rent Act is not applicable and the Court has jurisdiction to decide the suit. The said order is impugned in this revision application.

#. Considering the nature of order, as well as, considering the fact that, till today even issues are not framed. It is not necessary to examine this aspect, whether the Rent Act is applicable, and, whether suit instituted before the regular Court is entertainable. The trial Judge has made those observations merely for the purpose of deciding Exh.13. When necessary issues are framed arising out of pleadings, naturally, those issues are required to be decided as per the evidence, which might by led by the parties. At the time of deciding such issues, both the sides will be at liberty to adduce the evidence about the nature of possession of the defendant and as per the evidence on record, the trial Court will have to give finding on such issue, whether the land was used for what purpose and considering such purpose, whether the Rent Act is applicable or not. As a matter of fact, an application submitted by the defendant was clearly at premature stage, as, ultimately all these issues are required to be decided in the suit at the time of deciding entire suit considering the entire evidence. Therefore, order of the trial Court is not required to be interfered. However, it is clarified that, as and when issues are framed, both the parties are at liberty to lead the evidence about the nature of possession, and, on the basis of such evidence, the trial Court will have to give its finding on the issues including the question of jurisdiction of the Court. However, all these points to be decided finally in the suit itself.

#. With these observations, revision application is dismissed. Rule is discharged with no order as to costs.

Ad-interim relief granted earlier stands vacated. It is clarified that, observations made in the order passed below the application Exh.13 may be treated as tentative observations as the same are made only for the purpose of deciding the interim application and ultimately the trial Court shall decide all these issues on its own merits on the basis of the evidence, which might be led by the parties.

(P.B.Majmudar,J)
(pathan)